

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GE HEALTHCARE BIO-SCIENCES AB,)
GE HEALTHCARE BIO-SCIENCES)
CORPORATION, and GENERAL)
ELECTRIC COMPANY,)
Plaintiffs,)
v.) C.A. No. 18-1899-CFC
BIO-RAD LABORATORIES, INC.,)
Defendant.)

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE A
SUR-REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER**

Plaintiffs (collectively, “GE Healthcare” or “Plaintiffs”) respectfully move this Court for leave to file a sur-reply in opposition to Defendant Bio-Rad Laboratories, Inc.’s (“Bio-Rad” or “Defendant”) Motion to Transfer. *See* D.I. 10, 11. Pursuant to Local Rule 7.1.1, the parties made a reasonable effort to resolve the matters set forth in this motion, and Bio-Rad has indicated that it does not oppose GE’s request for leave. In support of its motion, GE Healthcare states as follows:

1. In its reply (*see* D.I. 20) filed on March 6, 2019, Bio-Rad relies for the first time on its “proposal to stipulate to keep both cases in S.D.N.Y.,” citing to and attaching email correspondence between the parties’ counsel on this issue which was sent after the filing of GE Healthcare’s opposition brief. *See* D.I. 20 at 4 (citing D.I. 21, Ex. G). GE Healthcare respectfully requests leave to file a 3-page sur-reply to respond to this new argument and ensure that the factual record on this issue is complete. *See St. Clair Intellectual Prop. Consultants, Inc.*

v. Samsung Elecs. Co., 291 F.R.D. 75, 80 (D. Del. 2013) (“A Court may grant leave to file a sur-reply if it responds to new evidence, facts, or arguments.”).

2. GE Healthcare seeks leave to explain that Bio-Rad’s proposal “to keep both cases in S.D.N.Y.” had certain conditions, which led GE Healthcare to reject the proposal. Specifically, Bio-Rad’s proposed (1) consolidation of the present action with the S.D.N.Y action and (2) a stipulation that Bio-Rad could bring patent infringement counterclaims against unspecified GE Healthcare-related entities in the S.D.N.Y action. *See* D.I. 21, Ex. G at 1. Bio-Rad needed GE Healthcare’s consent to assert counterclaims in the S.D.N.Y action because it is well past the June 12, 2015 deadline for amending pleadings in that case. GE Healthcare further seeks leave to explain that it rejected Bio-Rad’s proposal because, among other things, venue would be improper in S.D.N.Y. over Bio-Rad’s patent infringement claims depending on which entities Bio-Rad sued. *See* Exhibit 1. GE Healthcare thus rejected Bio-Rad’s offer to enlarge the scope of the S.D.N.Y action and stated that the parties should proceed with their claims —*i.e.*, both GE Healthcare’s claims filed in this Court and Bio-Rad’s impending claims—where venue was/is proper when filed. *Id.* GE Healthcare also seeks leave to explain that Bio-Rad has continued to indicate that it may seek to transfer the S.D.N.Y action to N.D. Cal. *Id.*

WHEREFORE, GE Healthcare respectfully requests that the Court grant this motion and enter the enclosed proposed order.

/s/ David M. Fry

John W. Shaw (No. 3362)

David M. Fry (No. 5486)

Nathan R. Hoeschen (No. 6232)

SHAW KELLER LLP

I.M. Pei Building

1105 North Market Street, 12th Floor

Wilmington, DE 19801

(302) 298-0700

jshaw@shawkeller.com

dfry@shawkeller.com

nhoeschen@shawkeller.com

Attorneys for Plaintiffs

OF COUNSEL:

Jennifer Sklenar

Ryan M. Nishimoto

ARNOLD & PORTER KAYE SCHOLER LLP

777 South Figueroa Street, 44th Floor

Los Angeles, CA 90017

(213) 243-4000

Matthew M. Wolf

ARNOLD & PORTER KAYE SCHOLER LLP

601 Massachusetts Avenue, NW

Washington D.C. 20001

(202) 942-5462

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